RETIRED OFFICERS ASSOCIATION BULLETIN

Published Quarterly
For Members

VOL. 2 JULY, 1946 No. 3

MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS RETIRED OFFICERS ASSOCIATION

2517 Connecticut Avenue, Washington, D. C., Held May 15, 1946

The meeting was called to order at 3:00 P.M., the Chairman, Admiral Sellers, in the chair.

Present: Admiral Sellers, General Hughes, General Roberts, General Baker, Colonel Love, Commander Humphreys, Captain Alexander, Lt. Comdr. Frankenberger, Admiral Conard, Captain Henderson, General Little, Major Sherwood, Captain Roberts, Admiral Hamlet, Comdr. Cairnes, and Comdr. Hunnewell. The President announced a quorum present.

The minutes of the previous meeting held on February 18, 1946, after the Members Meeting at the Shoreham Hotel, were read. There were no corrections or amendments and the minutes were approved as read.

The President called for reports of officers.

The Executive Vice President read his report. The President asked for any discussion on the subject of procuring a new Executive Vice President or an assistant for the present one. General Little moved that someone be accepted to work with him until the great influx of new members is taken care of.

The President stated that this matter would be taken up later in the meeting.

The Executive Vice President moved that his report be received for the record. Seconded and carried. Report appended, marked "A".

The President asked for any other reports of officers. There were none. He called for a report of the Membership Committee. Admiral Hamlet, chairman of the Committee, reported the breakdown of membership of the Association as: Army, 1,399; Navy, 1,175; Marine Corps, 150; Coast Guard, 105; Coast & Geodetic Survey, 25; and Public Health Service, 10; making a total of 2,864 members—in good standing. The names of approximately 1,150 prospective retired officers were being considered and would be sent invitations to join within a very short time.

The Board directed the Executive Vice President to publish the minutes of this meeting and hereafter to print on the last page of each Bulletin the application blank, and if practicable at the bottom of the 7th page, so that in cutting out the application, the name and address of the member passing on the application would be printed on the back thereof.

The President called for the Finance Committee Report. General Little read the report which was accepted and approved as read.

The President asked for a report of a special Committee on the Caste System. General Little, chairman, reported he would have his report ready within a few days and would send it in to be kept in the file.

The President called for any unfinished business. Captain Roberts asked for discussion on the Resolution regarding eligibility of reserve officers for membership in the Association. He moved to take from the table Resolution No. 1, tabled at the Members Meeting, February 18, 1946, to make eligible to membership in the Association retired officers of the reserve components of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey and Public Health Service, as follows:

"WHEREAS, We have declared in our preamble that a purpose of the Association is 'To aid the retired personnel of the various services from which our members are drawn' and

"WHEREAS, during the past World War II a large number of Reserve officers have been retired for disability who look to the Association as one of the best suited to their needs, and

"WHEREAS, our present by-laws bar these worthy officers from membership, be it

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Published Quarterly By The
RETIRED OFFICERS ASSOCIATION
(INCORPORATED)
2517 CONNECTICUT AVENUE, N. W.
WASHINGTON 8, D. C.
TELEPHONE DEcatur 2022

PRESIDENT
Admiral David F. Sellers, 2216 Wyoming Ave., N.W., DE. 6024
FIRST VICE PRESIDENT
Maj. Gen. Louis McCarty Little, 3010 "O" St., N.W., MI. 7239
SECOND VICE PRESIDENT
Maj. Gen. Walter C. Baker, Kennedy Warren Apts., CO. 8869
THIRD VICE PRESIDENT
Lieut. Commander Charles W. Cairnes, U.S.C.G., Ontario Apts., CO. 0800
EXECUTIVE VICE PRESIDENT AND TREASURER
Rear Admiral Harry G. Hamlet, 6410 Beechwood Drive, Chevy Chase 15, Md., WI. 4818
PRESIDENT EMERITUS
Colonel A. T. Marix, U.S.M.C., 6616 W. Olympic Boulevard, Los Angeles 36, Calif.
BOARD OF DIRECTORS
Admiral David F. Sellers, U.S.N., Chairman

ARMY

Term Expiring February, 1950	Term Expiring February, 1948
Major General John H. Hughes	Major General Walter C. Baker
Brigadier General Charles D. Roberts	Colonel James Totten
Brigadier General Francis H. Pope	Colonel Albert C. Love
Colonel Lawrence C. Crawford	Colonel Harry La T. Cavenaugh

NAVY

Term Expiring February, 1950	Term Expiring February, 1948
Commander Lincoln Humphreys	Admiral David F. Sellers
Captain George A. Alexander	Rear Admiral Charles Conard
Lieut. Comdr. Hugo Frankenberger	Captain Robert Henderson

MARINE CORPS

Term Expiring February, 1950	Term Expiring February, 1948
Major General Louis McCarty Little	Major General Rufus Lane
Major Frank Sherwood	Captain John D. Roberts

COAST GUARD

Term Expiring February, 1950	Term Expiring February, 1948
Rear Admiral H. G. Hamlet	Rear Admiral Wm. J. Wheeler
Commander F. A. Hunnewell	Commander Charles W. Cairnes

COAST AND GEODETIC SURVEY

Term Expiring February, 1950	Term Expiring February, 1948
Lieut. Comdr. George E. Morris	Captain G. T. Rude

PUBLIC HEALTH SERVICE

Term Expiring February, 1950	Term Expiring February, 1948
Medical Director Bolivar J. Lloyd	Medical Director Allan McLaughlin

EDITOR.....H. G. HAMLET

Entered as second class matter, May 2, 1945, at the Post Office at Washington, D. C., under the Act of March 3, 1879.

Subscription price, 50c per year

"RESOLVED, That ARTICLE II, SECTION I be amended by the insertion of 'and Reserve' after the word 'regular' in the subject section effective February 18, 1946 to permit both regular and reserve retired officers to become members of the Retired Officers Association."

Seconded by Major Sherwood.

General Roberts arose to a parliamentary inquiry, was recognized and stated his question: "Does this Board of Directors have the authority to take from the table a measure placed there by a Members Meeting as this measure was?" The Chairman announced his ruling that, by the By-Laws, the Board of Directors is empowered to conduct all business of the Association in the period between meetings of the full membership, subject always to the approval or disapproval of the members at their next meeting. If this were not so, there would be no need for a Board of Directors since everything would have to be decided at a Membership Meeting. In the instant case the Members Meeting simply laid the matter on the table. Had the members meeting intended that the matter be not considered ad-interim by the Board of Directors, it would have so signified by adopting a motion to postpone until the next members meeting. The motion to take from the table is in order.

The Chairman further announced that because of the importance of the question he would permit, if there was no objection, wide debate upon the question of taking from the table, because, should the vote be not to take from the table, it is advisable for future reference to get into the record the views of both sides.

Captain Roberts summarized his statements in support of his motion to take from the table as follows:

"In regard to the question of reasons for supporting my Resolution to revise Article II, Section I, of the By-Laws, I believe the Resolution to be amply explanatory in itself and requires no amplification."

After a lengthy debate, participated in by Captain Henderson, General Baker, General Little and others, it was agreed that the opposed views should be entered in the minutes as follows:

This Association was originally founded as an organization for the welfare of retired officers and warrant officers of the regular services. There probably was not in the minds of the founders, and there certainly is not in the minds of those here expressing their views, any thought that regular officers are in a class which should be set entirely apart from reserve officers. They do feel, however, that regulars are career officers and reserves are not. Reserve officers both active and retired have a wider field for employment in civil and government positions than regulars. In that sense the reserve officer is set apart from the regular to the advantage of the reserve officer.

A regular officer must devote his active life and all of his time to his service, whereas a reserve officer, while rendering invaluable service to his country in the prescribed drill period, maneuvers and camps, is not called upon except in time of war and even then only in a limited sense to drop his peacetime profession or vocation in which he can make a place in his community for himself and his family limited only by his ability and resources.

While the ultimate aim of both regular and re-

serves is the defense of the Nation, the regular is far more responsible to the Nation for the preparation and conduct of that defense than is the reserve. This greater responsibility carries with it the right to greater reward both honorary and material provided, of course, that such rewards are earned. Whatever rewards are due a person who serves his country for short periods still greater rewards are due the person who serves full time continuously for a long period of years.

With the foregoing concept of the situation it would be inconsistent, and sometimes embarrassing, to have in our membership other than regulars however much we honor and respect those others.

It is argued that the retired reserve officers to whom alone of all the reserves it is proposed to extend the benefits of membership in this Association are few in number. The answer is that the principle previously mentioned, apply without regard to numbers.

A retired reserve officer has already been granted retirement pay benefits equal to and in some cases greater than a retired regular officer; he is not hedged about by laws and regulations forbiding engaging in private enterprise, or at least limiting the private enterprise in which he may engage, or in accepting government employment so that should reserve officers be admitted to membership we would have two classes seeking benefits and it seems obvious that the benefits sought must be of two different kinds, one for each category. We find it difficult to get unanimity of opinion among one class and it seems inadvisable to seek it from two classes.

In addition to the foregoing were reserves taken in there would always be present the possibility of the ill will of The Reserve Officers Association and the accusation of proselyting of those who properly belong in the Reserve Officers Association.

To those reserves who sometimes seek membership in this Association, possible because we already have some reserves whose membership was at one time authorized by the By-Laws, it is pointed out that an amendment to the By-Laws April 12, 1944 limits membership eligibility to retired officers and warrant officers of the Regular Services."

The question was called for on a voice vote. The Chair announced that he was in doubt and called for a rising vote. The result of this vote was ayes—2 and nays—14. So the motion was lost, and the Resolution lies on the table.

The President called for new business.

The Executive Vice President read a Resolution pertaining to moving from 2517 Connecticut Avenue, N. W. to 1602 Twentieth Street, N. W. at such time as does the United Services Life Insurance Company—and to enter into a lease for such space as the Executive Committee shall approve, as follows:

"WHEREAS, the lease under which we occupy office space will expire September 30, 1946, and it seems improbable that we will be able to renew, and

"WHEREAS, we have been offered the opportunity to move with the United Services Life Insurance Company to a building they have purchased at 1602 Twentieth Street, N. W., Washington, D. C., with rental at the rate of $2.50 per square foot of floor space, same rate as at present, with heat, light and janitor service,

"Now therefore, BE IT RESOLVED, that the Executive Vice President, with the approval of the Executive Committee, be authorized to incur the necessary expense of moving our office to the aforementioned premises, and to enter into a lease for such space as the Executive Committee shall approve, for the period of time that Committee shall deem advantageous."

The Executive Vice President offered the Resolution and moved its adoption. Seconded and adopted.

The President stated that the question of the new or assistant Executive Vice President, and the proposed public relations employee, will be referred to the Finance Committee. Without objection it was so ordered.

The President called for any other new business. There was none.

There being no further business before the Board, upon motion duly seconded and carried, the Board adjourned at 4:15 P.M.

/s/ LUCILLE A. AMBROSE,
Secretary.

"A"
EXECUTIVE VICE PRESIDENT'S REPORT
May, 1946

1. A very important matter has arisen in the past few days. The United Services Life Insurance Co., because of inability to make satisfactory arrangements for renewing their lease of the property at 2517 Connecticut Avenue, N. W., where we now rent office space, have purchased a home office at 1602 Twentieth Street, N. W., a more desirable building from the standpoint of room for expansion. It also has a passenger elevator, small but adequate and many other desirable features not available here. It is reasonable to suppose that if the tenure of the principal lease holder is so precarious as to require

moving out—ours is even more hopeless of remaining. The owner is determined to sell at auction.

2. The Insurance Company has very kindly invited the Association to move with them and become their tenants, rent to be on the same basis, $2.50 per square foot per year for floor space occupied.

3. I have a Resolution to offer when new business is taken up.

4. Beside the foregoing, I would like to bring to the attention of the Board the fact that the work in this office is increasing steadily. While I am glad to do the leg work required, as well as the other tasks that arise almost daily, nevertheless I would fail in my duty did I not advise you that the efficient performance of the duties of Executive Vice President demand the employment of either a new, younger and more vigorous Executive Vice President or an assistant for the present one. The latter requirement seems the more desirable since it would provide a relief for the Executive Vice President should he for any reason be no longer able to carry on. This immediately brings up the question of finances—obviously a competent, desirable assistant would merit some compensation, which would be an added financial burden, though I look with confidence for a large accretion to our funds from new members we are now seeking. Of course, a new younger Executive Vice President would solve the whole problem of increased efficiency with no added expense. Another solution would be to reduce the salary of the present Executive Vice President by the amount of salary required to be paid to an assistant. I have discussed this matter with Captain Franz O. Willenbucher, U.S.N., about to be returned to the retired list.

5. Another matter that seems to me to demand immediate attention is publicity—I mean the kind of publicity that only a skilled public relations official can produce. To that end I have talked with Mr. Myron F. Eddy, of 1 Hanson Place, Brooklyn, New York, a Naval officer retired, who is a professional public relations man, who, I think would accept affiliation with this Association in that capacity for a stipend based upon results obtained.

6. To consider the two foregoing proposals of additional help it is requested that the Chairman assign to the Finance Committee the task of interviewing the people named and any others, and report to the Executive Committee in a reasonable time, their conclusion and recommendations.

/s/ H. G. HAMLET,
Executive Vice President.

THE 1946 AMENDMENT TO THE PAY READJUSTMENT ACT OF 1942 IS OF SUCH INTEREST TO OUR MEMBERS THAT IT IS PRINTED IN FULL.

(Public Law 474—79th Congress)
(Chapter 523—2d Session)
(H. R. 6084)

AN ACT

To amend the Pay Readjustment Act of 1942, as amended, so as to provide an increase in pay for personnel of the Army, Navy, Marine Corps, Coast Guard, Coast and Geodetic Survey, and Public Health Service.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the first paragraph of section 9 of the Pay Readjustment Act of 1942, as amended, is hereby amended to read as follows:

"The monthly base pay of enlisted men of the Army, Navy, Marine Corps, and Coast Guard shall be as follows: Enlisted men of the first grade, $165; enlisted men of the second grade, $135; enlisted men of the third grade, $115; enlisted men of the fourth grade, $100; enlisted men of the fifth grade, $90; enlisted men of the sixth grade, $80; and enlisted men of the seventh grade, $75. Chief petty officers under acting appointment shall be included in the first grade at a monthly base pay of $150."

(b) The third paragraph of section 9 of the Pay Readjustment Act of 1942, as amended, is hereby amended to read as follows:

"Every enlisted man paid under the provisions of this section shall receive an increase of 5 per centum of the base pay of his grade for each three years of service up to thirty years. Such service shall be active Federal service in any of the services mentioned in the title of this Act or reserve components thereof; service in the active National Guard of the several States, Territories, and the District of Columbia; and service in the Enlisted Reserve Corps of the Army, the Officers Reserve Corps of the Army, the Naval Reserve, the Marine Corps Reserve, and the Coast Guard Reserve: PROVIDED, That retired enlisted men heretofore or hereafter retired with credit for thirty years' service in the Army, Navy, or Marine Corps and who served beyond the continental limits of the United States between 1898 and 1912, such service having been computed under previous laws as double time toward retirement, shall be entitled to receive the maximum retired pay now provided for the grade in which retired."

(c) Section 11 of the Act of March 4, 1925 (43

Stat. 1274; 34 U.S.C. 701), is hereby amended to read as follows:

"Sec. 11. That the band of the United States Marine Corps shall consist of one leader whose pay and allowances shall be those of a captain in the Marine Corps; one second leader whose pay shall be $230 per month and who shall have the allowances of a sergeant major; ten principal musicians whose pay shall be $180 per month; twenty-five first-class musicians whose pay shall be $150 per month; twenty second-class musicians whose pay shall be $120 per month; and ten third-class musicians whose pay shall be $102 per month; such musicians of the band to have the allowances of a sergeant; PROVIDED, That the second leader and musicians of the band shall receive the same increases for length of service and the same enlistment allowance or gratuity for reenlisting as is now or may hereafter be provided for other enlisted men of the Marine Corps: PROVIDED FURTHER, That in the event of promotion of the second leader, or a musician of the band, to leader of the band, all service as such second leader, or as such musician of the band, or both, shall be counted in computing longevity increase in pay: AND PROVIDED FURTHER, That hereafter during concert tours approved by the President, members of the Marine Band shall suffer no loss of allowances."

(d) Retired members of the band of the United States Marine Corps and former members of the band of the United States Marine Corps heretofore transferred to the Fleet Marine Corps Reserve shall have their retired pay and retainer pay computed as now authorized by law on the basis of the pay provided in section 11 of the Act of March 4, 1925, as amended by subsection (c) of this Act, which pay shall include increases for all active duty performed since retirement or transfer to the Fleet Marine Corps Reserve in the computation of their longevity pay: PROVIDED, That nothing contained in this Act shall operate to reduce the present pay of any former member of the band of the United States Marine Corps now on the retired list or drawing retainer pay.

SEC. 2. (a) The second and third paragraphs of section 8 of the Pay Readjustment Act of 1942, as amended, are hereby amended to read as follows:

"First mates and assistant engineers of the Army Mine Planter Service shall receive base pay at the rate of $2,340 per annum and shall be entitled to the money allowances for subsistence and for rental of quarters as established by sections 5 and 6 of this Act for officers receiving the pay of the first period.

"Chief warrant officers of the Army except masters and chief engineers in the Army Mine Planter Service and commissioned warrant officers with less than ten years of commissioned service, of the Navy, Marine Corps, and Coast Guard, shall receive base pay at the rate of $2,520 per annum and shall be entitled to the money allowances for subsistence and for rental of quarters as established by sections 5 and 6 of this Act for officers receiving the pay for the second period: PROVIDED, That a commissioned warrant officer or chief warrant officer promoted from the grade of warrant officer or warrant officer (junior grade) shall suffer no reduction of pay by reason of such promotion: PROVIDED FURTHER, That nothing herein contained shall be held to affect the authority of the Secretary of War to designate permanent or temporary chief warrant officers of the Army to receive the base pay and allowances of the third and fourth pay periods as provided in section 3 of the Act approved August 21, 1941 (Public Law 230, Seventy-seventh Congress)."

(b) The seventh paragraph of section 8 of the Pay Readjustment Act of 1942, as amended, is hereby amended to read as follows:

"When the total pay and allowances authorized by this section for any person shall exceed the rate of $550 per month, the amount of the allowances to which such person is entitled shall be reduced by the amount above $550."

SEC. 3. The first paragraph of section 7 of the Pay Readjustment Act of 1942, as amended, is hereby amended to read as follows:

"The annual base pay of a brigadier general of the Army or the Marine Corps, rear admiral (lower half) of the Navy, the Coast Guard, or the Coast and Geodetic Survey, the Assistant Commandant of the Coast Guard, the Engineer in Chief of the Coast Guard, commodore of the Navy, an Assistant Director of the Coast and Geodetic Survey, and an assistant to the Surgeon General of the Public Health Service, shall be $6,600; and the annual base pay of a major general of the Army or the Marine Corps and of a rear admiral (upper half) of the Navy, the Coast Guard, or the Coast and Geodetic Survey, or the Surgeon General of the Public Health Service shall be $8,800. Every such officer shall be entitled to the money allowances for subsistence and for rental of quarters authorized in sections 5 and 6 of this Act for officers receiving the pay of the sixth period."

SEC. 4. The second paragraph of section 1 of the Pay Readjustment Act of 1942, as amended, is hereby amended to read as follows:

"The first period, $2,160; the second period, $2,400; the third period, $2,760; the fourth period,

$3,300; the fifth period, $3,850; and the sixth period, $4,400."

SEC. 5. The increases in pay resulting from the amendments made by this Act to the Pay Readjustment Act of 1942, as amended, shall be applicable to the active duty, retired, retirement, or retainer pay of all persons whose pay is governed by, or by reference to, those sections of the Pay Readjustment Act of 1942, as amended, which are amended by this Act.

SEC. 6. Hereafter the retired or retirement pay of any person whose name is borne on the emergency officers' retired list of the Army, Navy, Marine Corps, or Coast Guard of the United States and who is entitled to receive retired or retirement pay shall, in lieu of being computed upon the basis of the pay to which he was entitled at the time of his discharge from his commissioned service, be computed upon the basis of the rate provided in the Pay Readjustment Act of 1942, as amended by this Act, for an officer or corresponding grade who is credited with the same number of years of service for longevity purposes as the number with which such person is credited.

SEC. 7. The increases in pay provided by this Act shall become effective on the first day of the first calendar month following its enactment, and no increase in pay for any period prior thereto shall accrue by reason of the enactment of this Act.

Approved June 29, 1946.

DECISIONS OF THE COMPTROLLER GENERAL

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON

B-12238 November 7, 1940.

The Honorable,
The Secretary of the Navy.

Sir:

I have your letter of September 7, 1940, referring for decision the question presented in letter of August 31, 1940, from the Chief of the Bureau of Supplies and Accounts, as follows:

"1. The Act of June 10, 1896, 29 Stat. 361, as amended by the Act of July 22, 1935 (34 U.S.C. Supp. V, Sec. 883) provides ' *** That no payment shall be made from appropriations made by Congress to any retired officer in the Navy or Marine Corps who for himself or for others is engaged in the selling of, contracting for the sale of, or negotiating for the sale of, to the Navy or the Navy Department, any naval supplies or war material.' It is recommended that request be submitted to the Comptroller General for decision whether retired pay may be paid to Rear Admiral Frederic R. Harris, (CEC), USN, Retired and to Rear Admiral A. L. Parsons, (CEC), USN, Retired, in view of the facts hereinafter outlined.

"2. There exists a contract, NOy-4228 dated June 8, 1940, with Frederic R. Harris, Inc., for engineering services for general storehouse and office building at the Navy Yard, New York. Rear Admiral Harris is the President and Rear Admiral A. L. Parsons is Vice-President of the said corporation. The contract in question was entered into under the provisions of Section 3 of the Act of April 25, 1939 (53 Stat. 590, 592), which reads in part as follows:

" 'Whenever deemed by him to be advantageous to the national defense, and providing that in the opinion of the Secretary of the Navy the existing facilities of the Naval Establishment are inadequate, the Secretary of the Navy is hereby authorized to employ, by contract or otherwise, outside architectural or engineering corporations, firms, or individuals for the production and delivery of the designs, plans, drawings, and specifications required for the accomplishment of any naval public works or utilities project or the construction of any naval vessel, aircraft, or part thereof, without reference to the Classification Act of 1923 (42 Stat. 1488). The personal service mentioned in section 3709, Revised Statutes, is an individual service performed by a single person, or by firms, for the Government, under a contract made with Government to render for it his or their individual services, of either skilled or unskilled labor, under the direction of the Government, thereby becoming the servant of the Government in the performance of such labor, ordinarily for a stipulated price.'

"4. The contract referred to in the second paragraph provides for paying the contractor $50,000, which includes a fixed fee of $20,000 and actual costs, $30,000. The question presented herein arises also in connection with four other contracts between the Navy Department and Frederic R. Harris, Inc., as follows:

NOy 3561 which provided for a fee of $33,150
NOy 4156, which provided for a fee of 60,000
NOy 4224, which provided for a fee of 350,000
NOy 4227, which provided for a fee of 10,000"

As indicated in the above letter, it is provided in the act of June 10, 1896, 29 Stat. 361, as amended by the act of July 22, 1935, 49 Stat. 490, that appropriated moneys shall not be available to make payments to any retired officer in the Navy or Marine Corps who is engaged in the selling, contracting for the sale of, or negotiating for the sale of "naval sup-

plies or war materials" to the Navy or Navy Department. The contracting firm here in question, of which two retired Navy officers are the president and vice president, respectively, has agreed by the terms of several contracts to produce and deliver certain plans and specifications. Since authority is granted to the Secretary of the Navy to employ, by contract or otherwise, outside engineering corporations, firms or individuals for the production and delivery of plans and specifications such as those here involved, the only question presented is whether said contracts are for the sale of "naval supplies or war material" within the meaning of the act of June 10, 1896, *supra*, with the result that the prohibition contained in said act is for application here. There is nothing in the terms of the act of June 10, 1896, as amended, nor in the legislative history thereof which discloses an intention that the words "naval supplies or war material" were used in other than their normal and usual sense. Persons or firms that furnish plans, specifications, designs, drawings, etc., for the Navy are commonly understood as being engaged in the furnishing of professional services, and clearly professional services are not "naval supplies or war materials" as amended (5 U.S.C., ch. 13), or to section 3709 of the Revised Statutes of the United States (41 U.S.C. 5). In no case shall the fee paid for any service authorized by this section exceed 6 per centum of the estimated cost, as determined by the Secretary of the Navy, of the project to which such fee is applicable.

"3. The services to be performed under the contract are as follows:

"'1(a). The Engineer for the consideration hereinafter mentioned will render all the services required for the production and delivery of plans showing foundation conditions and of basic specifications for the design and construction of the types of foundations that are found to be most suitable for a proposed 15-story general storehouse and office building at the Navy Yard, New York (Brooklyn), N. Y., such plans and specifications to be based on the results of the necessary subsurface explorations and installation of test piles to be made by the Engineer.

"'(b). The Engineer agrees that all plans and specifications furnished hereunder shall be and remain the property of the Department.

"'(c). The Engineer shall provide five sets of the plans and specifications to be furnished hereunder.' It will be noted that the Act of July 22, 1935 quoted supra, prohibits the payment of retired pay to a retired officer in the Navy or Marine Corps who for himself or others is engaged in the selling of, contracting for the sale of, or negotiating for the sale of, to the Navy or Navy Department any naval supplies or war material and thus the question arises as to whether contracts for personal services come within the prohibition of the cited act. In this connection attention is invited to 6 Comp. Gen. 180 in which the Comptroller General stated that 'Nonpersonal services have been defined as necessitating the furnishing of both personal services and material or supplies. 5 Comp. Gen. 231'. In construing the term 'personal services,' within the meaning of Section 3709, Revised Statutes, the Comptroller of the Treasury, in 6 Comp. Dec. 314, stated:

"'I have formulated the following definition of "personal services" as used therein, which, although it may be imperfect, may be of some assistance to you in determining the questions of advertisement, or the declaration of an exigency, or the necessity for neither: within the accepted meaning of that term. In the case of *Stephens* v. *Hicks*, 156 North Carolina 239, 36 L. R. A. (NS) 354, 356, it was held that plans and specifications prepared by an architect were not "materials" within the meaning of a statute which granted liens to materialmen. The court stated:

"* * * No one would ever think of an architect's building plans and specifications as 'material,' within the meaning of the statute * * *."

In the case of *Franklin* v. *Horton*, 116 Atlantic 176, there was under consideration a statute which required public advertisement for bids in connection with the award of contracts "for the furnishing of any materials, supplies or labor." It was held that advertising was not required in the case of a con-

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To RETIRED OFFICERS ASSOCIATION,
2517 Connecticut Ave., N. W., Washington 8, D. C.

Date .....

Gentlemen:—

You may enroll me as a member of the Retired Officers Association. Inclosed is check for $5.00:

Entrance fee	$1.00	
Annual dues	4.00	*Fifty cents of which is for subscription to Association Bulletin.*
	$5.00	

Name .....
(Please Print)

Rank and Service .....

Mailing Address .....

City ..... Zone ..... State .....

tract with an engineer for the preparation of plans and specifications for an electric distributing system "because such services require scientific knowledge and professional skill, and are not comprehended by the legislative designation 'work', 'materials', 'supplies', and 'labor'." Citing *Heston* v. *Atlantic City*, 107 Atlantic 820.

In answer to the specific question here presented I have to advise that the prohibition contained in the act of June 10, 1896, against the use of public moneys for making payments to any retired officer of the Navy or Marine Corps who engages in the selling of or in contracting or negotiating for the sale of "naval supplies or war materials" to the Navy or Navy Department, is not for application in the case of contracts for the production and delivery of plans and specifications such as those here involved.

Respectfully,

(Signed) LINDSAY C. WARREN,
Comptroller General
of the United States.

ASSISTANT COMPTROLLER GENERAL OF THE UNITED STATES

Washington 25, D. C.

B-37397 November 9, 1943.

The Honorable,

The Secretary of the Navy. SO1110 172

My dear Mr. Secretary:

There has been considered your letter of October 1, 1943, file JAG:K:WJB:blm, requesting decision as to what service officers of the Coast Guard, who were retired for physical disability prior to June 1, 1942, and subsequently recalled to active duty, are entitled to count for pay purposes in the computation of their retired pay under the provisions of the Pay Readjustment Act of 1942, 56 Stat. 359, as amended, upon relief from active duty and return to the retired list in their permanent rank.

Section 15 of the Pay Readjustment Act of 1942, 56 Stat. 367, provides, in pertinent part, as follows:

"On and after the effective date of this Act, retired officers * * * shall have their retired pay * * * computed as now authorized by law on the basis of pay provided in this Act, which pay shall include increases for all *Active* duty performed since retirement * * *." (Underscoring supplied.)

The effect of the above-quoted statutory provision is to give an officer retired prior to the effective date of the Pay Readjustment Act of 1942, *supra*, the same retired pay as an officer of the same rank and length of service retired subsequent to such effective date. Hence, such an officer may count for pay purposes in the computation of his retired pay such service, both active and inactive, up to the time of his retirement, as is authorized to be counted by section 1 of the said Pay Readjustment Act of 1942. See decision of July 28, 1943, answer to the first question, 23 Comp. Gen. 59, 61. However, in the absence of contrary statutory provisions such as contained in section 8 of the act of July 24, 1941, 55 Stat. 604, considered in the said decision of July 28, 1943, the service rendered subsequent to retirement which a retired officer is authorized to count in the computation of his retired pay is, by the provisions of section 15 of the 1942 pay act, *supra*, expressly limited to service performed on active duty.

Accordingly, you are advised that officers of the Coast Guard, who were retired for disability prior to June 1, 1942, and subsequently were recalled to active duty, are, on relief from active duty and return to the retired list in their permanent rank, entitled to retired pay based upon such active and inactive commissioned service to their credit *at the time of retirement*, as is authorized to be counted by section 1 of the said 1942 pay act, as amended, and upon *active* commissioned service, only, performed subsequent to retirement. Hence, the period of time between date of retirement and date of recall to active duty is required to be excluded in the computation of the officer's retirement pay.

Respectfully,

/s/ FRANK L. YATES,
Assistant Comptroller General
of the United States

NOTICE

Captain F. O. Willenbucher, U.S.N., Retired, will assume the recently constituted office in the Association of Legal Counsel and Assistant to the Executive Vice President on August 1, 1946.

RETIRED OFFICERS ASSOCIATION BULLETIN
2517 Connecticut Avenue, N.W.
Washington 8, D. C.
Entered as second class matter, May 2, 1945, at the Post Office at Washington, D. C., under the Act of March 3, 1879.